

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 257 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL INDUBEN MAHESHBHAI

Versus

PATEL MAHESHBHAI MANILAL

Appearance:

1. Civil Revision Application No. 257 of 2001
MR AN PATEL for Petitioner No. 1
MR JA ADESHRA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 16/04/2002

ORAL JUDGEMENT

Rule. Mr. Adeshra learned advocate waives service of Rule on behalf of respondent. By consent, Rule is fixed forthwith. Heard Mr. Patel, learned advocate for the petitioner-wife and Mr. Adeshra, learned advocate for the respondent wife-husband. Even

earlier, considering the request made before me for settlement, the matter was adjourned for hearing today. However, counsel appearing in the matter before me has informed that parties are present in the court and there is no possibility of any settlement between them.

2. The petitioner has challenged the order passed by the learned Civil Judge (SD) Patan dated 12th October, 2000 below Application Ex. 4 in a petition filed by the applicant under Sections 24 and 25 of the Hindu Marriage Act. It is the case of the petitioner-wife that in an application for maintenance filed before the Criminal Court under Section 125 of the Cr.P.C., the learned Magistrate has awarded maintenance to the extent of Rs.300/- p.m. By filing this application for enhancement of interim maintenance, it is the case of the petitioner-wife that respondent husband is serving with Tata Telecom at Gandhinagar and earned Rs.7573/- p.m. and she has also produced salary slip to prove the income of the husband. It is also an admitted fact that the respondent husband is handicapped person and the proceedings for maintenance initiated at the end of the petitioner wife under Section 125 of the Cr.P.C., wherein, the learned Magistrate has granted maintenance to the extent of Rs.300/- p.m.

2. It is the case the respondent - husband that he has liability to maintain his son, who is with the husband and he has also liability to maintain his parents and further that applicant wife is also getting Rs.1500/- by way of doing some tailoring work. However, no document is produced by the respondent to show that the applicant wife is getting any amount by way of tailoring work.

3. The learned trial Judge has considering the case put forward by the parties and considering the amount of maintenance granted by the criminal court, had fixed the interim maintenance by granting Rs.900/- p.m. and also awarded Rs.1000/- by way of costs for the application filed. The learned trial Judge has accordingly, fixed the interim maintenance at the rate of Rs.900/- p.m. Mr. Adeshra has also vehemently urged that this court is not required to interfere while exercising my revisional jurisdiction and further he has placed reliance upon the order passed below application being H.M.P. No. 44/99, wherein, the application itself is dismissed for default by the learned trial Judge by observing that the applicant has not remained present and no sufficient cause was shown for her absence before the trial Court or no medical certificate is produced before the trial

court. He accordingly, submitted that once the main application being H.M.P. No. 44/99 filed by the petitioner applicant under Section 9 of the Hindu Marriage Act is dismissed, this court will not entertain the present revision application and prayed for dismissal of the revision application.

5. Mr. Patel appearing for the petitioner has submitted that it is true that the application under Section 9, which was filed by the petitioner was dismissed for default. However, it is his submission that an application for restoration is already filed and the same is pending. It is further found from the order passed by learned J.M.F.C. Chanasma, wherein, by consent of the parties, amount of maintenance which was granted in favour of the wife for Rs.300/- p.m. was increased to Rs.450/- p.m. Mr. Adeshra has produced the xerox copy of the order dated 17.1.2001. Admittedly, the said order was passed by the learned Magistrate after the order of interim alimony passed by the learned trial Judge. It is an admitted fact that the amount of interim maintenance is increased from Rs.300/- p.m. to Rs.450/- p.m.. However, in the present application, by way of interim alimony, the trial court has fixed the interim alimony by granting Rs.900/- p.m. and as found that the salary of the respondent husband as per the salary slip is Rs.7573/- p.m.. However, it is also an admitted fact that son Jay is with the husband and is required to be maintained as well as husband is also required to maintain his education expenses. So far as liability to maintain parents, it is an admitted fact that father of the respondent is a retired Government servant and is also having monthly income by way of pension.

6. Without expressing anything on the contentions raised before me and documents produced before me, I am of the view that the applicant has made out a case for enhancement of interim alimony and the husband is directed to pay interim maintenance at Rs.1050/- p.m. to the applicant wife i.e. husband has to pay Rs.150/- p.m. more than the amount fixed by the learned trial Judge to his wife. Accordingly, this civil revision application is allowed to the extent that the order passed by learned trial Judge is modified to the extent that the applicant wife is entitled to sum of Rs.1050/- p.m. from the date of order passed by the learned trial Judge from the respondent husband. Rule is made absolute in above terms with no order as to costs.

(D.K.Trivedi, J.)

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